

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 24, 2003

Agenda ID #2156

TO: PARTIES OF RECORD IN RULEMAKING 01-10-024

This is the draft decision of Administrative Law Judge (ALJ) Walwyn. It will appear on the May 8, 2003 Commission's agenda. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f)(9), comments on the draft decision must be filed by April 30, 2003 and reply comments by May 2, 2003.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Comments should be served electronically on all parties and a hard copy of the comments must be served separately on the Assigned Commissioner and ALJ, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

Angela K. Minkin, Chief
Administrative Law Judge

ANG:cgj

Attachment

Decision DRAFT DECISION OF ALJ WALWYN (Mailed 4/24/03)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

ORDER MODIFYING DECISION 02-08-071

Summary

In this decision, we modify Decision (D.) 02-08-071 to allow the Commission the flexibility, upon a showing of good cause, to allow for a departure from the requirement that new renewable resources procured by the three respondent utilities through a set-aside during the transitional period process be required to come online and begin delivering electricity before the end of 2003. We make this modification on our own motion, pursuant to Section 1708 of the California Public Utilities Code, because the specific facts set forth in Commissioner Kennedy's Alternate to Draft Resolution (Res.) E-3816, circulated for public comment on April 7, 2003, demonstrates that good cause may exist in certain instances to allow for departure from the 2003 online requirement.¹

¹ Draft Res. E-3816 and the alternate by Commissioner Wood have not been circulated for public review and comment.

Background

In D.02-08-071, the Commission authorized the respondent utilities to enter contracts in participation with the California Department of Water Resources (DWR) during a transitional period from August 22, 2002 to January 1, 2003 and also required the utilities to set aside a portion of their procurement in this transitional period to come from renewable resources. The specific program adopted for renewable procurement is discussed in Section V. of D.02-08-071, which states in pertinent part:

Though Assembly Bill 57 is not yet law, we see no reason to delay movement towards this renewable resource goal. Thus, during the transitional period, we require that each Investor Owned Utility hold a separate competitive solicitation for renewable resources in the amount of at least an additional one percent of their annual electricity sold beginning January 1, 2003. Utilities should solicit bids for electricity to be delivered beginning January 1, 2003, and extending for 5, 10, and 15 year terms, with no contract shorter than five years. Utilities should enter into contracts with a mixture of term lengths. During the solicitation process, utilities should give a preference to existing renewable resources in the bidding process if their bids are equal to or lower than prices offered by new projects. We also require that any contracts for new renewables projects require that the resources come online and begin delivering electricity before the end of 2003. We intend to make more provisions for new renewable resources in the long-term procurement process.²

Pursuant to the renewable set-aside requirements of D.02-08-071, SCE filed Advice Letter (AL) 1676-E on December 24, 2002. In this filing, SCE requested Commission approval of five power purchase agreements (PPAs) with new

² The 2003 online requirement is discussed only in Section V. of D.02-08-071. It is not contained in the findings, conclusions, or ordering paragraphs of D.02-08-071.

renewable resources. Res. E-3809 approved four of the five proposed PPAs, deferring consideration of the remaining contract to a later meeting. Draft Res. E-3816 and two alternates to the resolution were noticed for Commission action at the April 17, 2003 conference; a public version of Commissioner Kennedy's alternate was served on all parties for public review and comment on April 7, 2003. Comments were filed on April 14, 2003 by California Biomass Energy Alliance (CBEA). CBEA states it does not oppose approval of the PPA but if the contract is for geothermal power the draft resolution should be modified to require that this power be certified as "incremental" by the California Energy Commission before it can be counted toward the 1% interim requirement.

Discussion

Commissioner Kennedy's alternate to draft Res. E-3816 contains several statements that indicate good cause may exist to not hold a contracting party to the 2003 online requirement in specific instances. First, both the draft resolution and the alternate resolutions find that the price and other contract terms at issue therein are reasonable, and resulted from an open and competitive solicitation. This PPA does not displace any comparable bidders. The next bidder in the stack offered a significantly higher price and nowhere near the quantity of power.³

Second, the PPA under consideration was first submitted for our review on December 24, 2002 and in Res. 1676-E we deferred consideration of this contract to a later meeting, thereby leading to a delay of several months. Third,

³ See discussion at page 18 of alternate draft.

at the September 28, 2002 meeting of SCE's procurement review group (PRG), the nonmarket participant members of the PRG agreed that SCE should accept bids from projects with on-line dates after December 31, 2003. All bidders were notified that SCE would consider proposals providing for delivery of energy and, if applicable, firm capacity commencing on or before June 1, 2004 in SCE's Request for Proposals from Eligible Renewable Resource Suppliers.⁴

We find the facts discussed above, when taken together, should be grounds for the Commission to depart from the otherwise applicable 2003 online requirement. Therefore, we should modify D.02-08-071, on our own motion, to grant us the flexibility to alter the 2003 online requirement when the Commission determines that good cause exists. The following criteria are relevant to the good cause determination:

1. The proposed PPA is the result of an open and competitive bid solicitation that notified all bidders that proposals would be considered for renewable energy projects that did not meet the 2003 online requirement set forth in D.02-08-071.
2. The proposed PPA must contain reasonable prices and terms, provide for reliable renewable power, and not displace any comparable bidders.
3. A factor in the failure of the PPA to meet the 2003 online date is that Commission action or inaction had a role in delaying the project.

Whether or not good cause has been shown to depart from the 2003 online date, and what online date should be imposed in lieu of the 2003 online date, will

⁴ See September 28, 2002 RFP, footnote 1.

be a fact-specific determination for the Commission to make in connection with a particular PPA.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Christine M. Walwyn is the assigned Administrative Law Judge in this proceeding.

Reduction of Time for Comments on the Draft Decision

Pursuant to Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure, we determine that the public necessity requires reduction of the 30-day period for public review and comment because failure to adopt a final decision by the Commission's May 8, 2003 agenda meeting could cause a delay in the Commission's consideration of draft Res. E-3816 and potentially result in significant harm to the public interest. Comments are due on April 30, 2003 and reply comments on May 2, 2003.

Findings of Fact

The facts contained in Commissioner Kennedy's draft Res. E-3816, released for public comment on April 7, 2003, show that the Commission should have the flexibility, upon a showing of good cause, in the case of specific renewable contracts, to allow for later online dates than the 2003 online date set forth in Section V. of D.02-08-071.

Conclusions of Law

1. The Commission should modify Section V. of D.02-08-071 to allow the 2003 online requirement to be altered for specific new renewable resources contracts if good cause is shown.
2. Pursuant to Rule 77.7(f)(9), we reduce the period for public review and comment due to public necessity.

O R D E R**IT IS ORDERED** that:

1. Section V. of Decision (D.) 02-08-071 is modified as follows:

Though Assembly Bill 57 is not yet law, we see no reason to delay movement towards this renewable resource goal. Thus, during the transitional period, we require that each Investor Owned Utility hold a separate competitive solicitation for renewable resources in the amount of at least an additional one percent of their annual electricity sold beginning January 1, 2003. Utilities should solicit bids for electricity to be delivered beginning January 1, 2003, and extending for 5, 10, and 15 year terms, with no contract shorter than five years. Utilities should enter into contracts with a mixture of term lengths. During the solicitation process, utilities should give a preference to existing renewable resources in the bidding process if their bids are equal to or lower than prices offered by new projects. We also require that any contracts for new renewables projects require that the resources come online and begin delivering electricity before the end of 2003. A different, later, online requirement may be imposed by the Commission for specific contracts if good cause is shown. We intend to make more provisions for new renewable resources in the long-term procurement process.

2. The following Conclusion of Law is added to D.02-08-071: The respondent utilities should be required, during the transition procurement process, to procure at least one percent of their annual electricity sales through a set-aside competitive procurement process. Under this requirement, the utilities should:

- a. solicit bids for electricity to be delivered beginning January 1, 2003, and extending for 5, 10, and 15 year terms, with no contract

shorter than five years. Utilities should enter into contracts with a mixture of term lengths.

- b. give a preference to existing renewable resources in the bidding process if their bids are equal to or lower than prices offered by new projects.
- c. require that any contracts for new renewables projects come online and begin delivering electricity before the end of 2003. A different, later, online requirement may be imposed by the Commission for specific contracts if good cause is shown.

This order is effective today.

Dated _____, at San Francisco, California.